

REMARKS

In this response all of the pending claims are cancelled and replaced with a new set. These newly presented claims include claims which are consistent with the originally presented set of claims that were directed to the slurry. This overcomes the Office Action dated July 12, 2007, holding that the submission filed with the RCE was not fully responsive in that it presented claims that were independent and distinct from the previously filed claims.

The rejection of claims 1-5 under 35 US § 102(b) or in the alternative under 35 US § 103(a) in light of the reference to Simpson (USP 4,379,109) is deemed rendered moot by the cancellation of these claims. Further, the newly presented claims define over the disclosure/suggestion found in this reference in that for the sake of rejection, a plasticizer has been taken as disclosing a solvent and further in that the rejection cites a thickening agent which is not recited in the claims.

First, it is submitted that a plasticizer is not a solvent as per an interpretation which is consistent with the specification.

A plasticizer is defined by Wikipedia, the free encyclopedia as additives that soften the materials (usually a plastic or a concrete mix) they are added to. Although the same compounds are often used for both plastics and concretes, the desired effect is slightly different. The plasticizers for plastics soften the final product increasing its flexibility. Plasticizers for concrete soften the mix before it hardens, increasing its workability, and are usually not intended to affect the properties of the final product after it hardens.

A solvent, on the other hand, is defined as a liquid that dissolves a solid, liquid, or gaseous solute, resulting in a solution. Solvents usually have a low boiling point and evaporate easily or can be removed by distillation, thereby leaving the dissolved substance behind. Solvents should therefore not react chemically with the dissolved compounds — they have to be essentially inert.

The effect of a solvent and a plasticizer is therefore different. The plasticizer is intended to have an affect the mixture into which it is introduced which is beyond that of dilution such as by a solvent. Indeed, Simpson defines plasticizer as being something that provides "flexibility

while retaining suitable strength"- see column 3 lines 37-38. The requirement of plasticizer in Simpson is therefore different from a solvent in that a solvent would not be expected to provide this flexibility/strength characteristic. Note also that, at column 4, lines 30-38, it is indicated that the plasticizer is extracted using solvents in which the plasticizer is soluble. This is clear suggestion that Simpson considers solvents and plasticizers to be different materials.

Unless it can be shown that solvents soften (as different from simply dissolve) the materials they are mixed with then the position that plasticizers can be relied upon (in each and every instance as required to establish inherency) to either anticipate or suggest a solvent then the rejection must be considered untenable and such that it cannot be applied to the newly submitted claims.

In connection with the molecular weight requirements of the claim, Simpson discloses a mol. wt. of at least 150,000. The claims call for one polymer to have a molecular weight of 400,000 or more and another which is 400,000 or less. 150,000 is about 1/3 of 400,000 and therefore not particularly suggestive of the 400,000 or more requirement. Indeed, it is relatively low and therefore not particularly suggestive of 400,000 or less either.

Attention is also called to the fact that at column 3, lines 10-14, Simpson, suggests that the high weight polyethylene can be blended with lower molecular weight polyethylene to avoid brittleness. This is such as to lead away from the 400,000 which is claimed and back toward the disclosed 150,000 value.

It is therefore submitted that this reference contains neither disclosure of the two molecular weight requirements nor is suggestive of the two. It is also submitted that the disclosure of a molecular weight of at least 150,000 can only be used against one of the three polymers which are recited in the newly presented claims. Any further office action should identify which of the recited three that these teachings are being applied against should this case not now stand in condition for allowance.


Conclusion

It is submitted that the newly presented claims are patentable over the cited art for at

least the reasons advanced above. Favorable consideration and allowance of this application is therefore courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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